IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4895 OF 2001

1. Shetkari Shikshan Prasarak Mandal,
Hosur, Through its Secretary At
& Post: Hosur, Taluka:Chandgad,
District Kolhapur.

2. B.S.Patil High School through
its Head Master At & Post:Hosur,
Taluka: Chandgad,
District Kolhapur. Petitioners

v/s.

1. The State of Maharashtra, through
its Secretary,
Education Department,
Mantralaya, Mumbai-400 032.

2. Dy, Director (Education),
Kolhapur Region, Kolhapur

3. Education Officer,
Zilla Parishad, Kolhapur.

4. Director (Education),
Government of Maharashtra,
Pune.

5. Navyug Shikshan Prasarak Mandal,
Hosur, Taluka Chandgad,
District Kolhapur, Hosur. Respondents

Mr.S.S.Pakale for the petitioners.

Mr.S.K.Chinchlikar,A.G.P. for the respondents 1 to 4.

Mr.G.N.Salunkhe for the respondent no.5.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 17th March 2005

ORAL JUDGMENT (Per R.M. Lodha,J.):

Heard.

2. This is second round of litigation between the first petitioner and the fifth respondent for the permission and recognition of a secondary school at Hosur. Prior to the present writ petition, the present fifth respondent (hereinafter to be referred to as 'Navyug Shikshan Mandal') filed writ petition before this Court challenging the order dated 23rd June 1999 passed by the Deputy Director of Education, Kolhapur Region, Kolhapur granting recognition to the school run by the present first petitioner (hereinafter to be referred to as 'Shetkari Shikshan Mandal'). That writ petition being writ petition No.2264/2000 was disposed of on 24th August 2000 by the Division Bench holding thus:

> "5. We have considered the submissions made by the rival parties. In our opinion having regard to the nature of the controversy raised in the present petition it would be appropriate to refer the dispute between the parties to the district level committee constituted by this court in writ petition no.1773 of 2000. The State Government is directed to forward the application of the petitioner as well as the respondent no.5 alongwith their accompaniments to the district level committee within a period of four weeks. The district level

committee shall hear all concerned parties and make a report to the State Government within 8 weeks and after receipt of the report from the district level committee the State Government will take final decision in the matter within a further period of 8 weeks. Till such decision is taken by the State Government the permission granted to the respondent no.5 society shall be considered as adhoc permission which will be subject to the final decision of the State Government. The petitioner school shall be closed down forthwith and students taking education in the petitioner's school will be accommodated in the school of respondent no.5 or any other school in the vicinity."

3. Pursuant to the aforesaid order of this Court, the State Government forwarded the application of the Shetkari Shikshan Mandal and the Navyug Shikshan Mandal along with their accompaniments to the district level committee. The district level committee examined the applications of both the parties. In its report, the district level committee found that both the institutions have acquired buildings on rent for running the school; both of them have open space; they have library and laboratory. Neither of the institutions has computers. The district level committee in its report also noticed that Shetkari Shikshan Mandal has been running the school since June 1999 after obtaining permission from the concerned authority while the Navyug Shikshan Mandal has been running the school unauthorisedly. As regards financial condition, Shetkari Shikshan Mandal was found to have bank balance

of Rs.42,920/- while the Navyug Shikshan Mandal had bank balance of Rs.97,106/-. The district level committee, accordingly, forwarded its report to the State Government. The State Government considered the report of the district level committee and vide its decision dated 2nd July 2001 granted permission for the secondary school to Navyug Shikshan Mandal. The permission dated 8th June, 1999 granted to the Shetkari Shikshan Mandal was cancelled. The decision dated 2nd July 2001 taken by the State Government was communicated to the Shetkari Shikshan Mandal by the Deputy Director of Education, Kolhapur vide communication dated 3rd August 2001. The Deputy Director of Education also communicated to the Shetkari Shikshan Mandal in the aforesaid communication that its recognition also stands cancelled. Aggrieved thereby the Shetkari Shikshan Mandal has filed this writ petition.

4. In the light of the report of the district level committee that we have already highlighted above, we hardly find any justification for cancellation of the permission granted to the Shetkari Shikshan Mandal to run the secondary school at Hosur. The less amount in its bank account hardly furnished the ground for cancellation of the permission granted to the Shetkari Shikshan Mandal particularly in a situation like this where the Shetkari Shikshan Mandal had been running the

secondary school at Hosur after obtaining permission from the concerned authority since the year 1999. On the other hand, the Navyug Shikshan Mandal was running the school unauthorisedly. If the impugned order of the State Government is upheld it would amount to putting the premium to unauthorised activity and penalising a person who has been running the school lawfully after obtaining requisite permission from the concerned authority.

5. In the light of what we have observed above, the permission granted by the State Government to the Navyug Shikshan Mandal vide impugned order dated 2nd July 2001 cannot legally stand. However, we find that the Navyug Shikshan Mandal has been running the secondary school since the year 2001 and its closure may affect the interest of the students. It appears to us that the schools run by the Shetkari Shikshan Mandal as well as by the Navyug Shikshan Mandal have sufficient student strength. As a matter of fact, during the course of hearing, the learned counsel for both the Institutions agreed that both the schools may be allowed to run. They handed in consent terms, marked "X" for identification purposes. We are thus satisfied that the decision of the State Government dated 2nd July 2001 and the communication dated 3rd August 2001 sent by the Deputy Director to the Shetkari Shikshan Mandal deserve

to be modified.

6. We record and accept the statement of the learned counsel for the Navyug Shikshan Mandal that the recognition also has been granted under the secondary School Code to them.

7. We, accordingly, dispose of this writ petition by the following order:

ORDER

(i) The decision dated 2nd July 2001 of the State Government is modified. The permission granted to the first petitioner (Shetkari Shikshan Prasarak Mandal) to run the school at Hosur on 8th June 1999 is restored.

(ii) The recognition granted to the Shetkari Shikshan Prasarak Mandal vide order dated 25th September 2000 is also restored and the communication of the Deputy Director of Education dated 3rd August 2001 is modified accordingly.

(iii) The permission granted to the respondent

no.5 (Navyug Shikshan Mandal) on 2nd July 2001 for the Secondary School at Hosur and so also the recognition in this regard shall remain undisturbed.

No costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)